

House File 2010 - Introduced

HOUSE FILE 2010

BY S. OLSON

A BILL FOR

1 An Act relating to the operations of certain common interest
2 communities.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **499A.201 Applicability.**

2 This chapter shall apply to cooperatives established under
3 this chapter unless otherwise provided in chapter 499C.

4 Sec. 2. NEW SECTION. **499B.1A Applicability.**

5 This chapter shall apply to horizontal property regimes
6 established under this chapter unless otherwise provided in
7 chapter 499C.

8 Sec. 3. Section 499B.15, subsection 2, Code 2014, is amended
9 by striking the subsection.

10 Sec. 4. NEW SECTION. **499B.21 Board of administration —**
11 **meetings and records.**

12 1. For horizontal property regimes with eight or more
13 apartments, if the form of administration is a board of
14 administration, the board of administration shall comply with
15 the requirements of chapter 499C.

16 2. For horizontal property regimes with seven or less
17 apartments, if the form of administration is a board of
18 administration, the board of administration shall comply
19 with the requirements of section 499C.401, subsection 2, and
20 sections 499C.402 and 499C.403.

21 Sec. 5. NEW SECTION. **499C.101 Title.**

22 This chapter shall be known and cited as the "*Iowa Common*
23 *Interest Ownership Act*".

24 Sec. 6. NEW SECTION. **499C.102 Public policy.**

25 The general assembly declares that it is the public policy of
26 the state that the management and affairs of common interest
27 communities be conducted openly, and this chapter shall be
28 construed to provide open access to the management of the
29 common interest community for the unit owners.

30 Sec. 7. NEW SECTION. **499C.103 Definitions.**

31 As used in this chapter, unless the context otherwise
32 requires:

33 1. "*Bylaws*" means the instruments, however denominated,
34 that contain the procedures for conducting the affairs of the
35 unit owners association or the executive board regardless of

1 the form in which the association is organized, including any
2 amendments to such instruments.

3 2. "*Common element*" means:

4 a. For a cooperative under chapter 499A or a horizontal
5 property regime under chapter 499B, all portions of the common
6 interest community other than the units.

7 b. For a planned community, any real estate within the
8 planned community which is owned or leased by the unit owners
9 association, other than a unit.

10 c. For all common interest communities, any other interests
11 in real estate identified in the declaration for the benefit
12 of unit owners.

13 3. a. "*Common interest community*" means real estate
14 described in a declaration with respect to which a person,
15 by virtue of the person's ownership of a unit, is obligated
16 to pay for a share of real estate taxes, insurance premiums,
17 maintenance, or improvement of, or services or other expenses
18 related to, common elements, other units, or other real estate
19 described in the declaration. "*Common interest community*"
20 includes a cooperative under chapter 499A and a horizontal
21 property regime under chapter 499B.

22 b. Common interest community does not include:

23 (1) A covenant that requires the owners of separate parcels
24 of real estate to share costs or other obligations related to a
25 wall, driveway, well, or other similar structure, unless all
26 such owners consent in writing to the creation of a common
27 interest community.

28 (2) Real estate described in paragraph "a" if all units are
29 owned by a single owner.

30 4. "*Declarant*" means a person or group of persons who,
31 as the record title owner of real estate, by a declaration,
32 creates a common interest community.

33 5. "*Declaration*" means the instrument, however denominated,
34 that creates a common interest community, including any
35 amendments to the instrument.

1 6. "*Executive board*" means the body, regardless of name,
2 designated in the declaration or bylaws to act on behalf of the
3 unit owners association.

4 7. "*Planned community*" means a common interest community
5 that is not solely a cooperative under chapter 499A or
6 solely a horizontal property regime under chapter 499B, and
7 includes property owner or homeowner associations. However, a
8 cooperative under chapter 499A or a horizontal property regime
9 under chapter 499B may be part of a planned community.

10 8. "*Rule*" means a policy, guideline, restriction, procedure,
11 or regulation, however denominated, which is not set forth in
12 the declaration or bylaws.

13 9. "*Unit*" means a physical portion of the common interest
14 community designated for separate ownership or occupancy or
15 as otherwise defined in the statute under which the common
16 interest community is organized.

17 10. "*Unit owner*" means a declarant or other person that owns
18 a unit, but does not include a person having an interest in a
19 unit solely as security for an obligation. In a horizontal
20 property regime under chapter 499B or a planned community,
21 the declarant is the owner of a unit. In a cooperative under
22 chapter 499A, the declarant is the owner of a unit to which an
23 interest has been allocated until that unit has been conveyed
24 to another person.

25 11. "*Unit owners association*" means an association,
26 regardless of name, organized as a for-profit or nonprofit
27 corporation, trust, limited liability company, partnership,
28 unincorporated association, or any other form of organization
29 authorized by the laws of this state, the membership of
30 which consists solely of unit owners except following
31 termination of the common interest community, at which time the
32 association shall consist of all former unit owners entitled
33 to distributions of proceeds or their heirs, successors, or
34 assigns.

35 Sec. 8. NEW SECTION. 499C.104 Variation by agreement.

1 Except as expressly provided in this chapter, the provisions
2 of this chapter may not be varied by agreement, and rights
3 conferred by it may not be waived.

4 Sec. 9. NEW SECTION. **499C.105 Applicability.**

5 Unless otherwise provided by law:

6 1. This chapter applies to common interest communities
7 within this state having eight or more units.

8 2. Any portion of a declaration, bylaws, covenant, or
9 other contractual provision existing prior to July 1, 2014,
10 that violates or is inconsistent with this chapter is not
11 enforceable. However, nothing in this chapter shall be
12 construed to invalidate other provisions of the declaration,
13 bylaws, covenant, or contractual provision of those common
14 interest communities established before July 1, 2014.

15 3. The provisions of this chapter shall prevail over any
16 conflicting provision of law under which a common interest
17 community or unit owners association is organized.

18 Sec. 10. NEW SECTION. **499C.201 Unit owners association —**
19 **executive board.**

20 1. A unit owners association shall have an executive board.

21 2. Except as otherwise provided in the declaration,
22 the bylaws, subsection 3 of this section, or provisions of
23 the statute under which the common interest community is
24 organized, an executive board acts on behalf of the unit owners
25 association.

26 3. An executive board shall not act on behalf of the unit
27 owners association to amend the declaration, to terminate the
28 common interest community, to elect members of the executive
29 board, or determine the qualifications, powers and duties, or
30 terms of office of executive board members. An executive board
31 may fill vacancies in its membership for the unexpired portion
32 of any term.

33 4. A declaration may provide for a period of declarant
34 control of the unit owners association, during which a
35 declarant, or persons designated by the declarant, may appoint

1 and remove the officers and members of the executive board.
2 For declarations filed on or after July 1, 2014, a period of
3 declarant control shall be clearly defined in the declaration.

4 Sec. 11. NEW SECTION. **499C.401 Meetings.**

5 1. Meetings of a unit owners association shall comply with
6 all of the following:

7 a. A unit owners association shall hold a meeting of
8 unit owners annually at a time, date, and place stated in or
9 determined in accordance with the declaration or bylaws.

10 b. A unit owners association shall hold a special meeting
11 of unit owners to address any matter affecting the unit owners
12 association if the association's president, a majority of the
13 executive board, or a number of unit owners comprising at
14 least forty percent of all votes in the association, unless a
15 different percentage is specified in the bylaws, request that
16 the secretary call the meeting. If the unit owners association
17 does not notify unit owners of a special meeting within thirty
18 days after the required number of unit owners has requested the
19 secretary to call a special meeting, the requesting members may
20 directly notify all unit owners of the meeting. Only matters
21 described in the meeting notice may be considered at a special
22 meeting.

23 c. A unit owners association shall notify each unit owner
24 of the time, date, and place of each annual and special unit
25 owners meeting not less than ten days and not more than sixty
26 days before the meeting date. Each meeting notice shall state
27 the time, date, and place of the meeting and the items on the
28 agenda in a manner reasonably calculated to apprise the unit
29 owners of that information, including but not limited to:

30 (1) A statement of the general nature of any proposed
31 amendment to the declaration or bylaws.

32 (2) A statement describing any budget changes.

33 (3) Any proposal to remove an officer or member of the
34 executive board.

35 d. The requirements relating to the timing of meeting

1 notices under paragraph "c" may be reduced or waived for a
2 meeting called to address an emergency. A meeting called to
3 address an emergency shall be limited to matters arising out
4 of the emergency.

5 e. Each unit owner shall be given a reasonable opportunity
6 at any meeting to comment on any matter affecting the common
7 interest community or the unit owners association.

8 f. The declaration or bylaws may allow for meetings of
9 unit owners to be conducted by telephonic, video, or other
10 conferencing method, if such method is consistent with
11 subsection 2, paragraph "g".

12 2. Meetings of the executive board and meetings of
13 committees of the unit owners association authorized to act for
14 the association shall comply with all of the following:

15 a. Meetings shall be open to the unit owners except during
16 executive sessions. The executive board and committees of the
17 unit owners association authorized to act for the association
18 may hold an executive session only during a regular or special
19 meeting of the board or the committee. No final vote or final
20 action may be taken during an executive session. An executive
21 session may only be held for the following reasons:

22 (1) To consult with the unit owners association's attorney
23 concerning legal matters governed by attorney-client privilege.

24 (2) To discuss existing or potential litigation or
25 mediation, arbitration, or governmental administrative
26 proceedings.

27 (3) To discuss matters relating to the job performance,
28 compensation, or health records of an individual employee or
29 specific complaints against an individual employee of the
30 unit owners association or against an independent contractor
31 retained by the unit owners association.

32 (4) To discuss contracts, leases, and other commercial
33 transactions for goods or services that are under negotiation,
34 including the review of bids or proposals, if public disclosure
35 of such matters would place the unit owners association at a

1 disadvantage.

2 (5) To discuss personal, health, or financial information
3 relating to a unit owner, a specific employee of the unit
4 owners association, or a specific employee of an independent
5 contractor retained by the unit owners association, including
6 any records of the unit owners association relating to such
7 information.

8 *b.* For purposes of this section, a gathering of board
9 members at which the board members do not conduct unit owners
10 association business is not a meeting of the executive board.
11 Executive board members shall not use incidental or social
12 gatherings of board members or any other method to evade the
13 meeting and notice requirements of this section.

14 *c.* During a period of declarant control, the executive board
15 shall meet at least one time each year. At least one of the
16 meetings shall be held at the common interest community or at
17 a place convenient to the unit owners of the common interest
18 community. After termination of the period of declarant
19 control, all executive board meetings shall be held at the
20 common interest community or at a place convenient to the unit
21 owners of the common interest community unless the unit owners
22 amend the bylaws to vary the location of such meetings.

23 *d.* At each executive board meeting, the executive board
24 shall provide a reasonable opportunity for unit owners to
25 comment on any matter affecting the common interest community
26 and the unit owners association.

27 *e.* Unless the meeting is included in a schedule given to the
28 unit owners or the meeting is called to address an emergency,
29 the secretary or other officer specified in the bylaws shall
30 give notice of each executive board meeting to each executive
31 board member and to each unit owner. Such notice shall be
32 given at least ten days before the meeting and shall state the
33 time, date, place, and agenda of the meeting.

34 *f.* If any materials are distributed to the executive board
35 before a meeting, the executive board, upon receipt of the

1 materials, shall make copies reasonably available to unit
2 owners, except that the executive board is not required to make
3 available copies of unapproved minutes or materials that are to
4 be considered during an executive session.

5 *g.* Unless otherwise provided in the declaration or bylaws,
6 the executive board may conduct a meeting by telephonic, video,
7 or other conferencing method if all of the following conditions
8 are met:

9 (1) The meeting notice states the conferencing method to
10 be used and provides information explaining how unit owners
11 may participate in the conference directly or by meeting at a
12 central location or conference connection.

13 (2) The process provides all unit owners the opportunity
14 to hear or perceive the discussion and to comment on matters
15 before the executive board.

16 *h.* Following termination of the period of declarant control,
17 unit owners may amend the bylaws to vary the procedures for
18 meetings described in paragraph "*g*".

19 *i.* In lieu of a meeting, the executive board may act by
20 unanimous consent if such action is documented in a record
21 authenticated by all executive board members. The secretary
22 shall give prompt notice to all unit owners of any action
23 taken by unanimous consent. After termination of the period
24 of declarant control, an executive board may act by unanimous
25 consent only to undertake ministerial actions or to implement
26 actions previously taken at a meeting of the executive board.

27 *j.* Unless otherwise restricted by this chapter or the common
28 interest community's bylaws, an executive board may determine
29 rules of procedure for the executive board.

30 *k.* An executive board may remove any person from a meeting
31 of the executive board upon a finding by a majority of the
32 board members that the person is being disruptive to the
33 meeting. An executive board may bar any person from meetings
34 of the executive board or other meetings of the common interest
35 community for a period of up to one year if the person has

1 been twice removed from a meeting within the preceding twelve
2 months.

3 1. An action by an executive board that is not in compliance
4 with this section is valid unless invalidated by a court. A
5 challenge to the validity of an action of the executive board
6 for failure to comply with this section shall not be brought
7 more than sixty days after the minutes of the executive board
8 of the meeting at which the action was taken are approved
9 or the record of that action is distributed to unit owners,
10 whichever is later.

11 Sec. 12. NEW SECTION. **499C.402 Association records.**

12 1. A unit owners association shall retain all of the
13 following:

14 a. Detailed records of receipts and expenditures relating to
15 the operation and administration of the unit owners association
16 and other appropriate accounting records.

17 b. Minutes of all unit owners meetings and executive board
18 meetings, a record of all actions taken by the unit owners or
19 the executive board without a meeting, and a record of all
20 actions taken by a committee in place of the executive board on
21 behalf of the unit owners association. The minutes retained
22 by the unit owners association shall indicate the date, time,
23 and place of the meeting, the names of all persons present
24 at the meeting, and each action taken at the meeting. The
25 minutes shall also include the results of each vote taken at
26 the meeting, including information indicating the vote of each
27 executive board member present at the meeting. The vote of
28 each executive board member present shall be made public at the
29 open session.

30 c. The names of all unit owners in a form that permits
31 preparation of a list of the names of all owners and the
32 regular mail or electronic mail address at which the unit
33 owners association communicates with them, and the number of
34 votes each unit owner is entitled to cast.

35 d. The unit owners association's original and amended

1 organizational documents, bylaws, including all amendments to
2 the bylaws, and all rules of the common interest community
3 currently in effect.

4 *e.* All financial statements and tax returns of the unit
5 owners association for the past three years.

6 *f.* A list of the names and addresses of the current
7 executive board members and officers.

8 *g.* The unit owners association's most recent annual report
9 delivered to the secretary of state, if applicable.

10 *h.* Copies of each contract to which the unit owners
11 association is currently a party.

12 *i.* Records of executive board or committee actions relating
13 to requests for design or architectural approval from unit
14 owners.

15 *j.* Ballots, proxies, and other records related to voting by
16 unit owners for one year after the election, action, or vote.

17 2. Except as provided under subsections 3 and 4, all records
18 retained by a unit owners association must be available for
19 examination and copying by a unit owner or the unit owner's
20 authorized agent during reasonable business hours or at a
21 mutually convenient time and location upon providing a five
22 days' notice that reasonably identifies the specific records
23 that are being requested.

24 3. Records retained by a unit owners association may be
25 withheld from inspection and copying to the extent that they
26 concern:

27 *a.* Personally identifiable information, salary, and medical
28 records relating to specific individuals.

29 *b.* Information relating to contracts, leases, and other
30 commercial transactions to purchase or provide goods or
31 services, that are currently under negotiation.

32 *c.* Information relating to existing or potential litigation,
33 mediation, arbitration, or governmental administrative
34 proceedings.

35 *d.* Information relating to existing or potential matters

1 involving governmental administrative proceedings or other
2 proceedings before a government tribunal for enforcement of the
3 declaration, bylaws, or rules.

4 e. Communications with the unit owners association attorney
5 which are otherwise protected by the attorney-client privilege
6 or the attorney work-product doctrine.

7 f. Information that if disclosed would violate another
8 provision of law.

9 g. Records of an executive session of the executive board.
10 However, upon the completion of a matter that is the subject of
11 an executive session held under section 499C.401, subsection
12 2, paragraph "a", subparagraphs (1) through (4), such records
13 of the executive session shall be available for inspection as
14 provided in this section.

15 h. Records directly related to the personal, health, or
16 financial information of a unit owner, if the person requesting
17 the records is not the unit owner that is the subject of the
18 records.

19 4. A unit owners association may charge a reasonable fee
20 for providing copies of any records under this section and for
21 supervising the inspection of such records.

22 5. The right to inspect records under this section includes
23 the right to copy records by photocopying or other means and
24 includes the right to receive copies through an electronic
25 transmission, if available, upon request of the requester.

26 6. A unit owners association is not obligated to compile or
27 synthesize information or records under this section.

28 7. Information or records obtained under this section shall
29 not be used for commercial purposes.

30 Sec. 13. NEW SECTION. **499C.403 Notice to unit owners.**

31 1. A unit owners association or an executive board, as
32 applicable, shall deliver each notice required to be given by
33 the association or board under this chapter to the regular mail
34 address or electronic mail address provided by each unit owner.
35 If a regular mail address or electronic mail address is not

1 provided by the unit owner, the notice may be delivered using
2 any of the following methods:

3 *a.* Hand delivery to the unit owner.

4 *b.* Mailing by regular mail or certified mail as defined in
5 section 618.15 to the address of the unit.

6 *c.* Any other method reasonably calculated to provide notice
7 to the unit owner.

8 2. The ineffectiveness of a good-faith effort to deliver
9 notice under subsection 1 does not invalidate an action taken
10 at a meeting or an action taken by other means.

11 Sec. 14. NEW SECTION. **499C.501 Cause of action — attorney**
12 **fees.**

13 A declarant, unit owners association, unit owner, or any
14 other person subject to this chapter may bring an action to
15 enforce a right granted or obligation imposed by this chapter,
16 the declaration, or the bylaws. In any action brought under
17 this chapter, the court may award reasonable attorney fees to
18 the prevailing party.

19

EXPLANATION

20 The inclusion of this explanation does not constitute agreement with
21 the explanation's substance by the members of the general assembly.

22 This bill creates the "Iowa Common Interest Ownership Act,"
23 new Code chapter 499C. The bill provides that it is the
24 public policy of the state that the management and affairs of
25 common interest communities be conducted openly and that the
26 new Code chapter is to be construed to provide open access to
27 the management of the common interest community for the unit
28 owners.

29 New Code chapter 499C defines "common interest community"
30 to mean real estate described in a declaration with respect to
31 which a person, by virtue of the person's ownership of a unit,
32 is obligated to pay for a share of real estate taxes, insurance
33 premiums, maintenance, or improvement of, or services or other
34 expenses related to, common elements, other units, or other
35 real estate described in the declaration. The bill specifies

1 that a common interest community does not include a covenant
2 that requires the owners of separate parcels of real estate
3 to share certain costs or other obligations, unless all such
4 owners consent in writing to the creation of a common interest
5 community, and does not include community where all units are
6 owned by a single owner.

7 The bill defines cooperatives under Code chapter 499A and
8 horizontal property regimes under Code chapter 499B to be
9 common interest communities. The bill specifies that unless
10 otherwise provided by law new Code chapter 499C applies to
11 all common interest communities established within this state
12 having eight or more units. However, the bill provides that
13 for horizontal property regimes with seven or less apartments,
14 if the form of administration is a board of administration, the
15 board of administration must comply with the requirements of
16 new Code section 499C.401(2), regarding meeting requirements,
17 and new Code sections 499C.402 and 499C.403, relating to
18 records and notice.

19 The bill does not, except as specifically provided, allow
20 for the provisions of new Code chapter 499C to be varied by
21 agreement, and rights conferred by new Code chapter 499C may
22 not be waived.

23 The bill also provides that any portion of a declaration,
24 bylaws, covenant, or other contractual provision existing prior
25 to July 1, 2014, that violates or is inconsistent with new Code
26 chapter 499C is not enforceable. However, nothing in new Code
27 chapter 499C shall be construed to invalidate other provisions
28 of the declaration, bylaws, covenant, or contractual provisions
29 of those common interest communities established before July
30 1, 2014. The bill specifies that the provisions of new Code
31 chapter 499C shall prevail over any conflicting provision of
32 law under which a common interest community or unit owners
33 association is organized.

34 The bill requires each unit owners association, as defined
35 in the bill, to have an executive board. The bill defines an

1 executive board as the body, regardless of name, designated
2 in the declaration or bylaws to act on behalf of the unit
3 owners association. However, the bill provides that an
4 executive board shall not act on behalf of the unit owners
5 association to amend the declaration, to terminate the common
6 interest community, to elect members of the executive board, or
7 determine the qualifications, powers and duties, or terms of
8 office of executive board members. The bill provides, however,
9 that an executive board may fill vacancies in its membership
10 for the unexpired portion of any term.

11 The bill provides that a declaration (the instrument that
12 creates the common interest community) may provide for a period
13 of declarant control of the unit owners association, during
14 which a declarant (the person or group of persons who creates
15 the common interest community), or persons designated by the
16 declarant, may appoint and remove the officers and members of
17 the executive board. The bill specifies that for declarations
18 filed on or after July 1, 2014, a period of declarant control
19 shall be clearly defined in the declaration.

20 The bill establishes requirements relating to meetings of
21 unit owners associations, executive boards, and committees
22 of such entities including requirements for the contents
23 of meeting notices, allowable actions during meetings,
24 requirements relating to unit owner comments, and the manner
25 in which meetings may be conducted. The bill also specifies
26 the manner and the reasons for which certain meetings may be
27 called.

28 The bill enacts requirements relating to the retention of
29 records by unit owners associations and specifies the records
30 retained by a unit owners association that may be withheld from
31 inspection and copying.

32 The bill requires a unit owners association or executive
33 board, as applicable, to deliver each notice required to be
34 given by the association under new Code chapter 499C to the
35 regular mail address or electronic mail address provided by

1 each unit owner. If a regular mail or electronic mail address
2 is not provided by the unit owner, the unit owners association
3 may deliver the notice by a different method specified in
4 the bill. The bill provides that the ineffectiveness of a
5 good-faith effort to deliver notice does not invalidate an
6 action taken at a meeting or an action taken by other means.
7 The bill provides that a declarant, unit owners association,
8 unit owner, or any other person subject to new Code chapter
9 499C may bring an action to enforce a right granted or
10 obligation imposed by the Code chapter, the declaration, or the
11 bylaws. In any such action, the court may award reasonable
12 attorney fees to the prevailing party.